Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States

JAMES KNISKERN, et al.,
Petitioners,

v.

RON AMSTUTZ, et al.,
Respondents.

On Petition for Writ of Certiorari
To the Ohio Supreme Court & Ohio Court of Appeals,
Eighth Appellate District

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Vol. III of IV
Pages 82- 128, L-O

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APPENDIX K

OH LEGIS 26 (2001)
2001 Ohio Laws File 26 (S.B. 108)

OHIO 2001 SESSION LAW SERVICE
124TH GENERAL ASSEMBLY

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Additions are indicated by <<+Text+>>; deletions by <<-Text->>. Changes in tables are made but not highlighted.

File 26
S.B. No. 108
CIVIL PROCEDURE—TORT REFORM

AN ACT To amend sections 1701.95, 1707.01, 1901.18, 2101.31, 2305.25, 2305.251, 2305.37, 2307.24, 2307.27, 2307.30, 2307.60, 2307.61, 2313.46, 2315.23, 2315.24, 2743.18, 2743.19, 2744.01, 2744.02, 2744.03, 2744.05, 3123.17, 4112.02, 4507.07, 4513.263, 4582.27, and 5111.81; to amend, for the purpose of adopting new section numbers as indicated in parentheses, sections 2307.24 (2307.16), 2307.27 (2307.17), 2307.30 (2307.18), 2315.07 (2315.05), 2315.08 (2315.06), 2315.23 (2315.08), and 2315.24 (2315.09); to revive and amend sections 109.36, 2117.06, 2125.01, 2125.02, 2125.04, 2305.10, 2305.16, 2305.27, 2305.38, 2307.31, 2307.32, 2307.75, 2307.80,

2315.01, 2315.19, 2315.21, 2501.02, 2744.06, 3722.08, 4112.14, 4113.52, 4171.10, and 4399.18; to revive, amend, and amend, for the purpose of adopting a new section number as indicated in parentheses, section 2315.18 (2315.07); to revive sections 163.17, 723.01, 1343.03, 1775.14, 2305.01, 2305.11, 2305.35, 2307.33, 2307.71, 2307.72, 2307.73, 2307.78, 2315.20, 2317.62, 2323.51, 2744.04, 4112.99, 4909.42, 5591.36, and 5591.37; to repeal sections 109.36, 163.17, 723.01, 1343.03, 1775.14, 1901.041, 1901.17, 1901.181, 1901.20, 1905.032, 2117.06, 2125.01, 2125.02, 2125.04, 2305.01, 2305.10, 2305.11, 2305.16, 2305.35, 2305.38, 2307.32, 2307.33, 2307.331, 2307.71, 2307.72, 2307.73, 2307.75, 2307.78, 2307.801, 2315.01, 2315.18, 2315.19, 2315.20, 2315.21, 2317.62, 2323.51, 2501.02, 2744.04, 2744.06, 3701.19, 3722.08, 4112.14, 4112.99, 4113.52, 4171.10, 4399.18, 4909.42, 5591.36, and 5591.37, as they result from Am. Sub. H.B. 350 of the 121st General Assembly to repeal sections 901.52, 2101.163, 2151.542, 2303.202, 2305.011, 2305.012, 2305.113, 2305.131, 2305.252, 2305.381, 2305.382, 2307.31, 2307.42, 2307.43, 2307.48, 2307.791, 2307.792, 2307.80, 2309.01, 2315.37, 2317.45, 2317.46, 2323.54, and 2323.59; to repeal sections 1901.262 and 1907.262, as enacted by Am. Sub. H.B. 350; to suspend part of section 1707.01; and to suspend sections 1707.432, 1707.433, 1707.434, 1707.435, 1707.436, 1707.437, and 1707.438 of the Revised Code and to amend Section 3 of Am. Sub H.B. 438 of the 121st General Assembly and to repeal Sections 3, 4, 5, 6, 7, 8, 9, 13, and 16 of Am. Sub. H.B. 350 of the 121st

General Assembly to repeal the Tort Reform Act, Am. Sub. H.B. 350 of the 121st General Assembly; to clarify the status of the law; to reorganize certain tort related provisions; and to revive prior law; to amend sections 2744.01 and 2744.03 of the Revised Code as scheduled to take effect on January 1, 2002, to continue the amendments of this act on and after that date; and to declare an emergency.

Be it enacted by the General Assembly of the State of Ohio:

Section 1. It is the intent of this act (1) to repeal the Tort Reform Act, Am. Sub. H.B. 350 of the 121st General Assembly, 146 Ohio Laws 3867, in conformity with the Supreme Court of Ohio's decision in State, ex rel. Ohio Academy of Trial Lawyers, v. Sheward (1999), 86 Ohio St.3d 451; (2) to clarify the status of the law; and (3) to revive the law as it existed prior to the Tort Reform Act.

Section 2.01. That sections 1701.95, 1707.01, 1901.18, 2101.31, 2305.25, 2305.251, 2305.37, 2307.24, 2307.27, 2307.30, 2307.60, 2307.61, 2313.46, 2315.23, 2315.24, 2743.18, 2743.19, 2744.01, 2744.02, 2744.03, 2744.05, 3123.17, 4112.02, 4507.07, 4513.263, 4582.27, and 5111.81 be amended; that sections 2307.24 (23071.6), 2307.27 (2307.17), 2307.30 (2307.18), 2315.07 (2315.05), 2315.08 (2315.06), 2315.23 (2315.08), and 2315.24 (2315.09) be amended for the purpose of adopting new section numbers as indicated in parentheses; that sections 109.36, 2117.06, 2125.01, 2125.02, 2125.04, 2305.10,

2305.16, 2305.27, 2305.38, 2307.31, 2307.32, 2307.75, 2307.80, 2315.01, 2315.19, 2315.21, 2501.02, 2744.06, 3722.08, 4112.14, 4113.52, 4171.10, and 4399.18 be revived and amended; that section 2315.18 (2315.07) be revived, amended, and amended, for the purpose of adopting a new section number as indicated in parentheses; and that sections 163.17, 723.01, 1343.03, 1775.14, 2305.01, 2305.11, 2305.35, 2307.33, 2307.71, 2307.72, 2307.73, 2307.78, 2315.20, 2317.62, 2323.51, 2744.04, 4112.99, 4909.42, 5591.36, and 5591.37 of the Revised Code be revived, all to read as follows:

Note: Text of Statutes Omitted.

Section 5.03. Notwithstanding the attempted amendment of Section 3 of Am. Sub. H.B. 438 by Am. Sub. H.B. 350 of the 121st General Assembly, section 2317.023 of the Revised Code, as enacted by Am. Sub. H.B. 438 of the 121st General Assembly, took effect on July 1, 1997.

Section 6. Sections 3, 4, 5, 6, 7, 8, 9, 13, and 16 of Am. Sub. H.B. 350 of the 121st General Assembly are repealed.

Section 7. In sections contained in this act that have been amended by acts subsequent to their amendment by Am. Sub. H.B. 350 of the 121st General Assembly (other than section 1901.18 of the Revised Code), matter removed by Am. Sub. H.B. 350 is revived, and matter inserted by Am.

Sub. H.B. 350 is removed, by amendment indicated as directed in rule 103-5-01 of the Administrative Code. But, notwithstanding rule 103-5-01 of the Administrative Code, in sections contained in this act that have not been amended by acts subsequent to their amendment by Am. Sub. H.B. 350 of the 121st General Assembly (1) matter removed by Am. Sub. H.B. 350 is revived by being reinserted without underlining, so as to indicate the intention that it is old law that is being revived and (2) matter inserted by Am. Sub. H.B. 350 is removed by being omitted, so as to indicate the intention that, by virtue of its noninclusion, it is being repealed because constitutionally meaningless. In section 1901.18 of the Revised Code, ratification of Sub. H.B. 350's cross-reference correction is indicated by amendment as directed in rule 103-5-01 of the Administrative Code.

<<Note: OH ST □□ 109.36, 4112.02>>

Section 8. Section 109.36 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 715 and Am. Sub. H.B. 571 of the 120th General Assembly. Section 4112.02 of the Revised Code is presented in this act as a composite of the section as amended by both Am. H.B. 264 and H.B. 471 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting version of the sections in

effect prior to the effective date of the sections as presented in this act.

Section 9. This act is an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for the necessity is that repeal of the Tort Reform Act and revival of prior law will clarify the status of law that is unsettled as a result of the act being held unconstitutional. Therefore, this act goes into immediate effect.

Date Passed: June 21, 2001

Approved July 6, 2001

Act Eff. July 6, 2001

OH LEGIS 26 (2001)

END OF DOCUMENT

APPENDIX L

OHIO CIVIL RULE 24

(A) **Intervention of right**

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of this state confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as practical matter impair or impede the applicants ability to protect that interest, unless the applicants interest is adequately represented by existing parties.

(B) **Permissive intervention**

Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of this state confers a conditional right to intervene; or (2) when an applicants claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(C) **Procedure**

A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Civ.R. 5. The motion and any supporting memorandum shall state the grounds for intervention and shall be accompanies by a pleading, as defined in Civ. R. 7(A), setting forth the claim or defense for which the intervention is sought. The same procedure shall be followed when a statute of this state gives a right to intervene.

APPENDIX M

• DR7-107 TRIAL PUBLICITY

(A) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that a reasonable person would be expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood or materially prejudicing an adjudicative proceeding in the matter.

(B) Notwithstanding division (A) of this rule, a lawyer may state any of the following:

(1) The claim, offense, or defense involved and except when prohibited by law , the identity of the persons involved;

(2) Information contained in a public record.

(3) That an investigation of a matter is in progress.

(4) The scheduling or result of any step in litigation

(5) The request for assistance in obtaining evidence and information necessary to obtain evidence

(6) A warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or the public interest;

APPENDIX N

RULE 15. ASSIGNMENT OF CIVIL CASES FOR TRIAL

(A) All civil cases shall be assigned to a judge by drawing a card from a sealed deck handled by the Clerk under the supervision of the Court Administrator. The deck shall be constructed so as to insure that the identity of the next judge's name is unknown until the card is drawn.

(B) It shall be the duty of the assigned judge to handle all court activity, including motions, emergency matters, case management conferences, pretrials and any post trial matters associated with the cases assigned to the docket.

Paragraphs C-J omitted as not pertinent.

Effective November 1, 1991; amended effective May 1, 1999. Sections C-J of Rule 15 omitted.

APPENDIX O

COMPLAINT

COUNT I

1. The Count I defendants, some of whom reside in Cuyahoga County, Ohio, were and/or are the duly elected members of the Ohio Legislature of both the Ohio House of Representatives and Ohio Senate, that constituted the 121st General Assembly of Ohio, that acted under color of law, and caused to be enacted into law Am.Sub.H.B. No. 350, and are sued herein, in their individual capacity only.

2. Am.Sub.H.B. No. 350 has subsequently been interpreted, not to be a constitutional legislative act, but was found by the Supreme Court of Ohio from the circumstances leading to its enactment, to be an intentional, ultra vires, judicial act of the Ohio Legislature that usurped judicial power as set forth in the Court's opinion, and in its syllabi 2 & 3, in the case it decided on August 16, 1999, published September 29, 1999 in the Ohio State Bar Association's Report, denominated The State ex rel. Ohio Academy of Trial Lawyers v. Sheward (1999), 86 Ohio St.3d 451, that states as follows in syllabus 2:

> "Am.Sub.H.B. No. 350 usurps judicial power in violation of the Ohio constitutional doctrine of separation of powers and, therefore, is unconstitutional.

Syllabus No. 3 states:

"Am.Sub.H.B. No. 350 violates the one-subject provision of Section 15(D), Article II of the Ohio Constitution, and is unconstitutional **in toto**."

3. Plaintiffs, as detailed in paragraphs 53, 59-65, are former personal injury and wrongful death plaintiffs, in cases litigated against the State of Ohio and certain of its political subdivisions, that were adjudicated by summary judgment against plaintiffs by the Court of Claims of Ohio in Columbus, Ohio and then affirmed on appeal by the Franklin County Court of Appeals also in Columbus, and then, at a pivotal point in that litigation, with plaintiffs' cases pending before the Supreme Court of Ohio awaiting a ruling upon plaintiffs' Memorandum In Support of Jurisdiction, plaintiffs' cases were, then and there, rendered de facto res adjudicata by the Ohio Legislature, by and through the Legislature's enactment and passage of its ultra vires, judicial act, Am.Sub.H.B. No. 350, as will hereinafter be more fully described.

4. Plaintiffs' cases became de jure res adjudicata, when the Supreme Court of Ohio, compelled as a matter of law, to take judicial notice of the Legislature's enactment of Am.Sub.H.B. No. 350, in October 1996, subsequently issued its order in which it declined to exercise or grant its constitutionally mandated, discretionary jurisdiction and denied granting an appeal to plaintiffs to review and hear their cases.

5. Plaintiffs' legal briefs, pending before the Supreme

Court of Ohio, prior to the enactment of Am.Sub.H.B. No. 350, qualified for such an appeal to the Supreme Court of Ohio, in that plaintiffs' Memorandum In Support of Jurisdiction had relied upon certain long standing, unrepealed, controlling statutory language in Ohio statutes, relevant to the particular facts peculiar to plaintiffs' cases, that raised and presented issues of public or great general interest, not yet determined or settled by the Supreme Court of Ohio.

6. The Supreme Court of Ohio thereafter, issued a second order declining to exercise or grant its constitutionally mandated discretionary jurisdiction of appeal to plaintiffs, upon plaintiffs' Motion For Reconsideration filed with that Court, notwithstanding that plaintiffs had contended therein, inter alia., that Am.Sub.H.B. No. 350 unconstitutionally denied the plaintiffs due process under the Ohio Constitution and the 14th amendment U.S. Constitution, had violated the separation of powers doctrine and that the Ohio Legislature's action had denied plaintiffs simple justice and fundamental fairness by changing the rules in the middle of the litigation in favor of the State of Ohio and its political subdivisions, who were the target defendants of the plaintiffs.

7. Plaintiffs say, that as to their particular suit, the State of Ohio statutorily waived its sovereign immunity and agreed to have its liability to plaintiffs adjudicated in the Court of Claims in accordance with the rules of law applicable to suits between private parties, thereby both relinquishing and waiving any right the State of Ohio may have, to decide the outcome of its case and controversy with the plaintiffs, by legislative enactment of the Ohio Legislature or otherwise, and

further subjecting the State of Ohio to the recognized customary substantive and procedural due process available and regularly afforded to private citizens in all other Ohio Courts by the Ohio Judiciary in compliance with the 14th Amendment to the U.S. Constitution and Ohio's Constitution that incorporates the identical concepts. 8. Plaintiffs bring this **42 U.S.C. § 1983** action against all of the above named defendant legislators, in their individual capacity, in that they knowingly, intentionally, maliciously and with wilful or wanton reckless disregard for the civil rights of the plaintiffs, acted under color of law, to damage the plaintiffs in their suit against the State of Ohio, by acting judicially through the enactment of Am.Sub.H.B. No. 350, that repealed certain language in Ohio statutes, relevant to the facts of plaintiffs' cases, that plaintiffs had relied upon both as a basis of the State's tort liability and in their Memorandum In Support Of Jurisdiction, to establish that the issues presented thereby, were issues of public or great general interest, jurisdictionally qualifying plaintiffs for a discretionary appeal in the Supreme Court of Ohio.

9. Plaintiffs say that those ultra vires judicial acts of the defendants, thereby preempted the Supreme Court of Ohio from its being able to invoke its constitutionally mandated discretionary jurisdiction, that authorizes the Supreme Court of Ohio to exercise its jurisdictional discretion in the granting of an appeal in cases such as the plaintiffs, only when plaintiffs' Memorandum In Support Of Jurisdiction raises and presents issues of public or great general interest, thereby pursuant to 42 USC § 1983, depriving plaintiffs of their rights to equal

protection, due process and the privileges or immunities of the 14th Amendment to the U.S. Constitution and the privileges or immunities of Article IV, § 2, to come to the seat of government to assert any claim plaintiffs may have upon that government to the fullest extent provided by law.

10. Plaintiffs say that both the syllabi and parts of the opinion of the Supreme Court of Ohio in the Sheward case, supra., contain the same and/or similar contentions made earlier by the plaintiffs in their motion for reconsideration of their Memorandum In Support of Jurisdiction in their wrongful deaths and personal injuries actions they had filed and submitted to the Supreme Court of Ohio, that inferentially evidences that the Court did not have the jurisdiction to grant a discretionary appeal to plaintiffs because of the enactment of Am.Sub.H.B. No. 350, by the defendants herein.

11. Plaintiffs say that the defendants' enactment of Am.Sub.H.B. No. 350, was in excess of their stated legislative authority delegated to them under the Constitution of the State of Ohio and was unlawfully used by defendants to nullify the substantive and procedural statutory waiver by the State of Ohio to have its liability determined in accordance with the rules of law applicable to suits between private parties, that adversely affected plaintiffs' cases that were pending before the Supreme Court of Ohio.

12. R.C. § 2743.02(A)(1), provides in part:

> The state hereby waives its immunity from liability and consents to be sued, and have its liability determined, in the court of claims created in this chapter in accordance with the

> rules of law applicable to suits between private parties, except that the determination of liability is subject to the limitations of this chapter and,....

The exception, that the determination of liability is subject to the limitations of this chapter is not in any way legally relevant to plaintiffs' claims.

13. The enactment of Am.Sub.H.B. No. 350, mooted and removed the plaintiffs' jurisdictional issues of public or great general interest, detailed in their Memorandum in Support Of Jurisdiction, disqualifying it as coming within the ambit of § 2, Article IV(B)(2)(d), of the Ohio Constitution's jurisdictional authority to the Supreme Court of Ohio to grant the discretionary appeal plaintiffs sought, thereby depriving them of a meaningful hearing of said Memorandum before the Supreme Court of Ohio to which they were entitled, as part of their U.S. & Ohio constitutional guaranteed right to a due process hearing on their discretionary appeal before and with the Supreme Court of Ohio.

14. Plaintiffs have a legitimate claim of entitlement to a vested property interest in the legal actions they litigated in the Court of Claims pursuant to R.C. § 2743.02(A)(1), that equitably and judicially estops and precludes the State of Ohio, including its Legislature, from taking official action of any kind whatsoever, that would alter the rules of law and the course of the adjudication of plaintiffs' litigation with the State of Ohio that deviated in any manner whatsoever, from the rules of law applicable to adjudications between private parties.

15. Plaintiffs' right to sue their State was originally granted, vested and reserved to them in the 11th Amendment of the U.S. Constitution, but removed by the federal judiciary as a legal fiction; thereafter, at all times relevant herein, plaintiffs had the reasonable expectation, stemming from the Ohio Constitution, that their right to sue the State of Ohio was a vested, fundamental, civil right that included having the complete due process of the State totally intact and available to plaintiffs, during the course of their suit and litigation against the State of Ohio in the Court of Claims of Ohio, the Court of Appeals of Franklin County and Supreme Court of Ohio for the purposes of obtaining a monetary judgment of damages for their personal injuries and statutory wrongful death actions.

16. These fundamental vested rights are not, and were not, otherwise subject to divestiture, either directly, indirectly or through the subterfuge of the Ohio Legislature usurping Ohio judicial power and acting judicially, so as to alter the outcome of plaintiffs' cases once the plaintiffs duly brought their suit in the Court of Claims of Ohio against the State of Ohio, inasmuch as, inter alia., private parties are not so similarly empowered to take such legal action unilaterally.

17. The foregoing action taken by Count I defendants, acting under color of law, is inter alia., an unconstitutional taking of plaintiffs' property and liberty rights without just compensation, under the Fifth and Fourteenth Amendment to the U.S. Constitution, by the State of Ohio, for inter alia., the public purpose of protecting the State Treasury from exposure to the potential money judgments arising from plaintiffs' vested property rights and vested legal interests in their

wrongful deaths and personal injuries suits against the State and its political subdivisions, that originated in the Court of Claims of Ohio.

18. The notion of fundamental judicial fairness, that no private party litigant has the legal right to unilaterally change any controlling, statutory law applicable to the controversy between such private party litigants, during the course of that litigation, is implicit in R.C. § 2743.02(A)(1), the 1975, statutory representation wherein the State statutorily waived its sovereignty and agreed to have its liability adjudicated in accordance with the rules of law applicable to suits between private parties.

19. R.C. § 2743.02(A)(1), was the long delayed, substantive, enabling legislation of plaintiffs' civil right to sue the State, under Article I, § 16, of the 1912, Ohio Constitution, all of which forms and is part of the substantive and procedural due process rights, equal protection of the laws rights, privileges and immunities rights under the Fifth & Fourteenth Amendments to the U.S. Constitution, and the privileges and immunities rights of Section 2, Article IV thereunder.

20. Plaintiffs say that all U.S. Constitutional rights, including the foregoing, were equally available as a matter of law, to both the plaintiffs and to the State as parties, in their earlier litigation originating in the Court of Claims, that was adjudicated in accordance with the rules of law applicable to suits between private parties, but that when that litigation reached the Supreme Court of Ohio, the defendants acted judicially, under color of law, on behalf of the State in its role

as sovereign, denying all of the above to the plaintiffs, to the plaintiffs' damage.

21. Am.Sub.H.B. No. 350, deprived plaintiffs of a due process hearing in the Supreme Court of Ohio to have meaningful considerations of plaintiffs' issues of great or general public interest, outlined in their Memorandum In Support of Jurisdiction, that would have and could have been fully considered and weighed by the Court, but were not, in that upon enactment the Supreme Court of Ohio was compelled as a matter of law, to take immediate judicial notice of that self-serving legislation, depriving plaintiffs of their legal right to a meaningful and fair opportunity to have plaintiffs' cases heard on appeal on the merits by that Court.

22. Plaintiffs say that as a matter of law, defendants are charged with actual as well as constructive knowledge and notice, that at the time of their enactment of Am.Sub.H.B. No. 350, that plaintiffs' cases against the State of Ohio and certain of its political subdivisions, were under consideration and briefed before the Supreme Court of Ohio, for the reason inter alia., that the Attorney General of the State of Ohio was defending the case.

23. Defendants are as a matter of law, charged with both actual, as well as constructive knowledge and notice, that plaintiffs were relying upon certain Ohio statutes to support their claim for appellate jurisdiction and reversal of their case in the Supreme Court of Ohio, for the reason inter alia., that the Attorney General of the State of Ohio was defending the case.

24. Plaintiffs say, that defendants are charged with the actual and constructive knowledge and notice detailed in paragraphs 22 & 23 preceding, for the additional reason, that Betty Montgomery had in her office assigned particular staff Assistant Attorney Generals, for the special purpose and duty of advising and counseling these defendants of the 121st General Assembly of Ohio, with respect to the law and the legality of the Ohio Legislature's proposed legislative enactments, and more especially Am.Sub.H.B. No. 350.

25. Plaintiffs say, that because the Attorney General was defending the State of Ohio in the Supreme Court of Ohio against plaintiffs' legal claims, that plaintiffs have probable cause to believe that as a matter of fact, all the defendants, some of whom were attorneys and charged with knowledge of constitutional law, were counselled by the Attorney General or her staff persons as to the statutory basis of plaintiffs' legal claims and the possible financial exposure to the State of Ohio that the Legislature would have to pay in damages, should the State of Ohio lose the pending cases, as well as to the constitutional consequences posed by the proposed enactment of Am.Sub.H.B. No. 350.

26. Plaintiffs say, that should the Court grant plaintiffs a remedy in tort in this case, that it give plaintiffs reasonable opportunity to prepare; and

27. That the Court authorize the plaintiffs to establish and introduce into evidence the State of Ohio's and its political subdivisions', the Township of Somerford's and the County of Madison's, liability and damages to the plaintiffs for their wrongful deaths and personal injuries; and

28. That the Court authorize plaintiffs to establish and introduce into evidence that their suits were meritorious and would have otherwise succeeded on the merits of their appeals to the Supreme Court of Ohio, had they been heard; and

29. That the Court authorize plaintiffs to introduce into evidence, evidence of the settlement and trial value of plaintiffs' monetary damages and probability of a successful trial outcome, following the remand of plaintiffs' cases for the trial; and

30. That the Court grant plaintiffs the right to establish the liability and damages they sustained, as if the outcome of their personal injury and deaths cases were a result of the legal malpractice of the defendants, using the relevant Ohio law applicable thereto, as a consequence of the Attorney General's dual involvement with the Count I defendants, and her legal defense of the State in the Supreme Court of Ohio of the wrongful deaths and personal injury case, brought by Plaintiffs against the State.

31. Plaintiffs say that as a direct and proximate legal result of the foregoing judicial acts of all of the defendant legislators, acting in concert or omitting to act in concert, the Supreme Court of Ohio was legally compelled to take judicial notice of their legislative enactment, Am.Sub.H.B. No. 350, that was legally imbued with the presumption of constitutionality and regularity; and

32. That the Supreme Court of Ohio was caused to further recognize in examining and evaluating plaintiffs' Memorandum In Support Of Jurisdiction, that this legislation, Am.Sub.H.B. No. 350, repealed the statutory predicate upon

which plaintiffs were relying, legally mooting plaintiffs' issues that they had asserted and were contending, qualified as issues of public or great general interest, thereby removing the Supreme Court of Ohio's constitutional, jurisdictional right to grant plaintiffs a discretionary appeal hearing, and as a matter of law compelling the Court to deprive plaintiffs of their discretionary appeal to its Court.

33. Plaintiffs say their Memorandum In Support of Jurisdiction qualified for a discretionary appeal before the Supreme Court of Ohio in that plaintiffs presented facts, statutes and cases in that Memorandum that substantially contradicted the legality of the summary judgments and appellate court affirmance below of their cases, that had decided plaintiffs' cases on substantial legal principles evolving from cases dealing with the sovereignty of the State of Ohio and its political subdivisions, and not upon legal principles of law applicable to private party adjudications.

34. Plaintiffs say that the Supreme Court of Ohio, in the ordinary course of judicial business, would have with reasonable judicial certainty accepted plaintiffs' case for appellate review as part of the Court's function and policy, to settle the unsettled state of the law presented from plaintiffs' cases, that was at issue in plaintiffs' Memorandum In Support of Jurisdiction.

35. The Supreme Court of Ohio with reasonable legal and/or judicial certainty would have reversed the judgments of the Courts below, and remanded plaintiffs' cases for trial, where, if not settled, upon trial would have resulted in a substantial award of damages against the State of Ohio and its

political subdivisions.

36. The action of all of the defendants, in enacting Am.Sub.H.B. No. 350, was to subvert the Ohio judicial process by specifically repealing the statutory language plaintiffs were relying upon for the granting of their discretionary appeal in the Supreme Court of Ohio, and to unilaterally change the substantive law applicable to their cases, leaving plaintiffs without the availability of any other legal recourse or remedy at law to redress their right to damages for the injuries and deaths they sustained.

37. These legislative repeals were specifically directed at plaintiffs, for the purpose of denying them their procedural due process rights to a discretionary appeal, and to further injure them in their substantive due process rights, by denying to them in their cases pending in the Supreme Court of Ohio, the rules of law available to private party adjudications to establish the State's legal liability and plaintiffs right to damages.

38. Plaintiffs sustained wrongful deaths and personal injuries as a consequence of an unsuitable guardrail that was protecting a man made wash bank, leading to a bridge on interstate highway I-70 that was constructed by the State of Ohio's agency, the Ohio Department of Transportation.

39. Plaintiffs' legal theory of guardrail liability was based, in part, upon the State of Ohio's statutory delegation to its County political subdivisions, that imposed upon the County the legal duty to maintain suitable guardrails at bridges in their respective County where a wash bank meets a public highway, and imposed statutory liability upon the County,

legal liability for damages caused to those persons injured or killed by the Counties' failure to do so. See R.C. § 5591.36 & R.C. § 5591.37, (pre October 1996), as detailed in "Exhibit B", a copy of which attached hereto, and incorporated by reference as though fully rewritten herein.

40. Plaintiffs had contended in the earlier litigation and still contend, that R.C. § 2743.02(A)(1), the State's statutory waiver of sovereign immunity and agreement to have its liability determined by the rules of law applicable to adjudications between private parties, subjects the State, as a statement of its public policy and delegation of duties and liabilities to its Counties, pursuant to R.C. § 5591.36 & R.C. § 5591.37, (pre October 1996), to the legal interpretation by the settled Ohio law of principal & agent and nondelegable duties.

41. The State, as a principal, lawfully delegated its nondelegable duty under R.C. § 5591.36 & R.C. § 5591.37, (pre October 1996), to its agents, the Counties, and imposed the same legal duty and liability upon the Ohio Department of Transportation, ("ODOT"), a State agency, by virtue of the public policy contained in those statutes, but the State became liable when ODOT undertook the building and construction of the I-70 bridge, its wash bank, the accident site guardrail, and the I-70 highway in 1970, in the County of Madison, Ohio and failed to install a suitable guardrail that became one of the proximate causes of personal injuries and deaths to the plaintiffs and plaintiffs' decedents in 1992, thereby making the State liable to plaintiffs for breaching its nondelegable duty as principal for the acts of its agents, under private party law.

42. The State's lower courts sustained the State's

liability for tort, as being limited at law to accidents that occur only on the paved portion of the highway, refusing to rule that the State's delegation to Ohio Counties, of statutory liability for unsuitable guardrails at wash banks, where they meet the public highways, makes the State liable, when a State agency goes into an Ohio county and builds such an unsuitable guardrail.

43. Sovereign immunity, otherwise legally reserved by the State of Ohio for its political subdivisions by statute, had been waived by the State of Ohio, when it statutorily permitted its Counties to be sued and liable in damages for tort for the existence of an unsuitable guardrail by a wash bank where it met a public highway, R.C. § 5591.36 & R.C. § 5591.37, (pre October 1996), and was waived when the State statutorily permitted all political subdivisions, that included both counties and townships to be sued and liable for their failure to keep public highway and public grounds free from nuisance R.C. § 2744.02(B)(3), (pre October 1996).

44. Sovereign immunity having been statutorily waived by the State of Ohio, wherein it agreed to have its liability adjudicated by the same rules of law applicable to private parties, if sued in the Court of Claims of Ohio, thereby became liable to plaintiffs as a matter of substantive law, for the State's own tortious action and behavior, (as that is the law applicable to private parties), upon evidence plaintiffs had presented in the Court of Claims, establishing that the Department of Transportation had violated the public policy of the State of Ohio in 1970, by building the I-70 wash bank, by building the I-70 bridge where the wash bank met the I-70

public highway that it had built, and then by constructing an "unsuitable guardrail" at that site, that failed to serve the safety function it was designed for, that caused damages to plaintiffs, thereby negating the summary judgments rendered against plaintiffs, it being an issue of material fact if the State had produced evidence of the accident site guardrail's suitability, under the leading case of Taylor v. Cincinnati, (1944), 143 Ohio St. 426,

45. The guardrail was prima facie "unsuitable", in that it failed to fulfill its statutory safety function of preventing motorists, including plaintiffs' driver, from accessing the wash bank and the creek below, because the guardrail was of insufficient length and lacked appropriate curvature, and it was therefore unable to prevent the motor vehicle that plaintiffs were passengers in, from travelling and passing immediately inside and parallel to the guardrail and falling precipitously into the creek below, over the wingwall bridge abutment that formed a man made wash bank.

46. Plaintiffs say that the long standing doctrine of sovereign immunity for torts occurring on public highways of the State of Ohio and its political subdivisions has resulted in Ohio courts strictly construing all statutes and concepts of tort liability against all plaintiffs, and in favor of the State and its political subdivisions, as is reflected in a long line of cases and case law that has and continues to limit their liability.

47. Plaintiffs say as a consequence of continuous legislation, litigation and development of the law, strict construction was no longer applicable as a matter of substantive law to plaintiffs' case, that had accrued in 1992,

that originated in the Court of Claims against the State of Ohio, because the State of Ohio's statutory waiver of sovereign immunity as to itself, subjects the State to the settled Ohio law of principal & agent and nondelegable duties, that contain the rules of law applicable to adjudications between private parties, and is recognized by Ohio Courts as controlling the legal relation between the State and its political subdivisions, in which the State has statutorily reserved the sovereign immunity doctrine for its political subdivisions.

48. As a matter of law, the State's relations with its political subdivisions are one of principal and agent, and its statutory waiver of sovereignty immunity in the Court of Claims of Ohio where the State adjudicates against the plaintiffs based on the rules of law applicable to private parties, equitably and judicially estops the nondefendant State of Ohio and defendants from denying the State's liability as principal, for the acts, duties and liabilities it statutorily delegated to its agents, the political subdivisions of Ohio, containing the public policy of the State, and from using its statutory reservation of sovereign immunity for its political subdivisions to deny its liability as principal with respect to its statutory waiver of sovereign immunity.

49. Plaintiffs say that as a consequence of paragraphs 37 & 38 above, the nondefendant State of Ohio as a matter of law, and the defendants in this case, are equitably and judicially estopped from representing to the Courts of Ohio in their defense by asserting and contending, that the line of adjudicated cases and case law that formerly limited the State of Ohio's tort liability to only the paved portion of the roadway

as a defense to its liability to plaintiffs is still viable, plaintiffs having the legal right to rely upon the Ohio rules of law applicable to adjudications between private parties as the basis for their equitable estoppel claims throughout this complaint.

50. Plaintiffs say that the nondefendant State of Ohio as a matter of law, and the defendants in this case, are equitably and judicially estopped from denying as a matter of law, that the State of Ohio is tortiously liable for constructing and maintaining the accident site guardrail, upon plaintiffs' prima facie evidence that it was unsuitable for the safety function it was intended to perform in accordance the State of Ohio's statutory mandate.

51. Plaintiffs say that the nondefendant State of Ohio as a matter of law and the defendants in this case are judicially estopped from denying as a matter of law, that it remains primarily liable as a principal for the plaintiffs' accident site guardrail it caused to be constructed by the State's agency, since it is a nondelegable duty under the law of principal and agent coupled with the legal doctrine predicated upon the well settled principle of law, that each private person or party is liable at law for his, her or its own torts.

52. Plaintiffs say that the nondefendant State of Ohio and the defendants in this case are equitably and judicially estopped from denying, that as a matter of law, that the plaintiffs' driver was not in any way negligent for his sudden, unexpected, involuntary loss of consciousness that may have expressed itself in his falling asleep at the wheel, unless they are able with additional probative evidence to show that his accident was due to and proximately caused by an act

recognized at law as being negligent and/or intentional.

53. Plaintiffs were at all times relevant herein, citizens of the State of Ohio and of the United States of America as were plaintiffs' decedents, except that plaintiff Guy Cavaliere was first ordered and reported to active duty on January 1, 1997 at Fort Sam Houston, at San Antonio, in the State of Texas, U.S.A. for basic training, and thereafter to the State of Georgia by the U.S. Army, where he first became a resident and citizen of the State of Texas, and thereafter became a resident and citizen of the State of Georgia with his plaintiff minor children, Maria and Joanna Cavaliere; his January 1, 1997 order to active duty occurring before the Supreme Court of Ohio ruled on plaintiffs' motion for reconsideration of their Memorandum In Support Of Jurisdiction.

54. Plaintiff, Guy Cavaliere, alleges that he was denied the privileges and immunities of Section 2, Article IV of the United States Constitution and that he was discriminated against and damaged by the defendants in his fundamental civil rights by denying him the right to come to the seat of government to assert and be heard to the fullest extent allowed by law as to his claim that he had or may have had, upon the State of Ohio and its political subdivisions, as described throughout this complaint.

55. All Plaintiffs and plaintiffs' decedents were party plaintiffs, in an action brought against the State of Ohio as party defendant, that was originally and timely filed in the Court of Claims of Ohio in Franklin County, Ohio as Case No. 94-07926 for damages sustained by the wrongful deaths of

Cynthia Ann Cavaliere, Jennifer Kniskern and Felina Cavaliere and personal injuries sustained by plaintiffs' Felina Cavaliere, Maria Cavaliere and JoAnna Cavaliere stemming from the June 13, 1992 motor vehicle accident on Interstate 70 in the Township of Somerford, County of Madison, State of Ohio.

56. Plaintiffs and plaintiffs' decedents were required by Ohio law, initially, to split their action for wrongful death and personal injury damages against the County of Madison and the Township of Somerford, political subdivisions of the State of Ohio as well as its joint and concurrent tortfeasors, by filing part of plaintiffs' action against the political subdivisions separately in the Court of Common Pleas of Cuyahoga County, Ohio, Case No. 272015, for the reason that the Ohio Court of Claims under Ohio statutory law did not have original jurisdiction with respect to a tort action against the political subdivisions.

57. Nonetheless, that action was subsequently removed from the Cuyahoga Common Pleas Court prior to any adjudication, at the instance of one of the political subdivision tortfeasors, to the Court of Claims of Ohio in Franklin County and was assigned Case No. 95-02901-PR, in accordance with R.C. § 2743.03(E)(1) & R.C. § 2743.03(E)(2) a special Ohio venue removal statute, that is unconstitutional, in that, the Court of Claims and the Franklin County Court of Appeals, 10th Appellate District, applied a different substantive rule of law in favor of a private party defendant and against plaintiffs, in their removed case, that concluded plaintiffs' action against that defendant, when the identical, controlling, substantive law

that existed in the Cuyahoga Court of Appeals, Eighth Appellate District of Ohio, was otherwise in favor of the plaintiffs.

58. Case No. 95-02901-PR was heard in conjunction with the plaintiffs Court of Claims of Ohio, Case No. 94-07926 against the State of Ohio that arose from same set of facts for which the Court of Claims had original jurisdiction.

59. Plaintiff James Kniskern is now a fully retired employee of the United States of America having worked two years with the Internal Revenue Service in the Department of Treasury and 27 years of consecutive employment with the Defense Financial Accounting Services in the Department of Defense, both agencies of the U.S.A.

60. James Kniskern is and was at all times relevant herein, the duly appointed administrator through the Probate Court of Geauga County, Ohio of the estates of Cynthia Ann Cavaliere, Case No. 94PE000203, Jennifer Kniskern, Case No. 93PE000281 and Felina Cavaliere, Case No. 94PE000202 for the purpose of acting as personal representative to bring wrongful death actions and a survivor action for the benefit of their estates and/or wrongful death beneficiaries. He brings this suit against the defendants herein in that capacity as well as in his individual capacity.

61. James Kniskern was plaintiff both in his individual and his official capacity as Administrator and personal representative in Case No. 95-02901-PR and Case No. 94-07926 in the Court of Claims for the three wrongful deaths actions and one survivor action for whom he was appointed administrator.

62. James Kniskern is the husband of JoAnn Kniskern. They are and were the natural parents of Cynthia Ann Kniskern, their married daughter; and Jenniffer Kniskern, their minor unmarried daughter; and the natural grandparents of Felina, Joanna and Maria Cavaliere their beloved grandchildren.

63. The plaintiff, Guy Cavaliere M.D., on September 30, 1993 enlisted in the U.S.Army Active Duty Reserves with the rank of Captain. On January 1, 1997 and thereafter to the present time he has been on active duty as a Major in the Medical Corps of the U.S. Army, currently serving as Chief of Anesthesiology at Martin Army Community Hospital at Fort Benning, Georgia, U.S.A.

64. The plaintiff, Guy Cavaliere, was the husband of his wife Cynthia Ann Cavaliere; the brother-in-law of Jennifer Kniskern; and the natural father of his three daughters Felina Cavaliere, Maria Cavaliere and Joanna Cavaliere all of whom were issue of that marriage and minors at the time of the accident that occurred on June 13, 1992 in which Cynthia Ann Cavaliere and Jennifer Kniskern were killed, with Felina Cavaliere sustaining mortal injuries, dying two weeks later in a hospital; and Maria Cavaliere and Joanna Cavaliere both sustaining serious personal injuries some of which are permanent.

65. Plaintiff Guy Cavaliere in the Case No. 95-02901-PR and Case No. 94-07926 in the Court of Claims, was a separate party plaintiff in his own right, and was an additional party plaintiff, as father and next friend on behalf of his minor children, Maria Cavaliere and Joanna Cavaliere, the latter

residing with her father in the State of Georgia, U.S.A., and Maria Cavaliere, no longer a minor, currently resides in the city of Chardon, County of Geauga and is a citizen of the State of Ohio.

66. Though the cases were litigated together, they were not legally consolidated in the Court of Claims of Ohio and resulted in separate summary judgments in favor of the defendants' State of Ohio, Department of Transportation, and a separate summary judgment in favor of the County of Madison and Township of Somerford.

67. These summary judgments were affirmed in a consolidated appeal adjudicated in the Franklin County Court of Appeals, 10th Appellate District of Ohio.

68. Plaintiffs then seasonably exercised their rights of further appeal of both cases that had been combined for that purpose by invoking the appellate jurisdiction of the Ohio Supreme Court in its Case No. 96-1861 by filing their Memorandum In Support of Jurisdiction, wherein they stated the required constitutional jurisdictional predicate that required the factual and legal issues presented be of public or great general interest and/or involves a substantial constitutional question as required by Ohio's Constitution Section 2(B)(2)(e), Article IV, and thereby qualified their cases in conformity with the constitutional, discretionary appellate jurisdiction requirements of the Supreme Court of Ohio.

69. Plaintiffs for their 42 U.S.C. § 1983 action against defendants state that Plaintiffs were entitled, as a matter of well settled procedural law of Ohio, to have a meaningful hearing and decision on their Memorandum in Support of

Jurisdiction pending before The Supreme Court of Ohio for the purpose of obtaining a discretionary appellate review and hearing of their cases by that Court.

70. Notwithstanding, that under the Constitution and laws of the State of Ohio the defendants were empowered and duly authorized to prevent or aid in preventing the denial of equal protection and due process of the laws and Constitution of the United States to the plaintiffs in their suit against the State of Ohio and its political subdivisions, yet the defendants nevertheless, willfully acting or omitting to act in concert, maliciously and/or with wanton or reckless disregard for the civil rights of the plaintiffs, acted in aid and the commission of those wrongs against plaintiffs to their damage.

71. Plaintiffs say that the Attorney General for the State of Ohio was permitted to intervene as a party intervenor on behalf of the State of Ohio and did actively defend on its behalf the constitutionality of Am.Sub.H.B. No. 350 enactment as a litigant in the case of The State ex rel. Ohio Academy of Trial Lawyers v. Sheward, supra, in the Supreme Court of Ohio, and that therefore, the defendants herein, did have a full and fair opportunity, with the Attorney General as their legal representative, to contest the issues of fact and law presented therein, that directly determined the issues leading to the Sheward syllabi, supra, with the Court's finding that the enactment of Am.Sub.H.B. No. 350, did not allow for any pretense of inadvertence, all of which was adjudicated in that case, by a valid final judgment with such determination being essential to that judgment.

72. The determination by the Supreme Court of Ohio

in the case of The State ex rel. Ohio Academy of Trial Lawyers v. Sheward, supra, as expressed in its syllabi 2 and 3 and the finding in its opinion from the circumstances of the Legislature's intention to do a judicial act as opposed to a legislative one, is conclusive as to the litigation sub judice under the modern view of res adjudicata, that embraces the doctrine of collateral estoppel, resulting in the defendant legislators, in their individual capacity, as a matter of law equitably and judicially estopped and precluded from relitigating the issues of that case with the Plaintiffs, though the plaintiffs were not parties to that case.

73. Consequently the defendant legislators are not as a matter law, entitled to qualified immunity for their ultra vires judicial act in this case and therefore as a matter of law defendants are equitably and judicially estopped from denying that they acted judicially in an ultra vires manner to usurp the judicial power of Ohio, in violation of the Ohio constitutional doctrine of separation of powers with respect to Am.Sub.H.B. No. 350, legislation.

74. The legislature defendants herein, are judicially estopped from asserting that they acted legislatively and are entitled to qualified immunity for their role in enacting AM.Sub.H.B. No. 350 with respect to plaintiffs action against them in this case.

75. Plaintiffs say that all of the statutes enacted, repealed or amended in toto or in part, by the defendants' passage of Am.Sub.H.B. No. 350, a general tort reform act, knowingly formed part of defendants' malicious modus operandi, so as to obfuscate and convolute the Ohio law, its

judicial processes and procedures of Ohio for the purpose of fragmenting, unsettling, and destructuring it, in part, to prevent plaintiffs from a meaningful hearing of their Memorandum In Support Of Jurisdiction, and in part, to injure Ohio trial lawyers, including plaintiffs' trial lawyer and Ohio judges at all levels in their profession, by making it impossible for them, though acting at the highest professional and intellectual level in good faith, to rationally integrate the Ohio law of torts on a cohesive, coherent basis and reach abiding legal decisions that justly settles both the tort law, as well as tort controversies.

76. Plaintiffs and their trial counsel, as a direct and proximate result of the foregoing acts of the defendants, were injured in their property rights represented in the anticipated damages they were seeking in the wrongful deaths and personal injury actions brought by them against the State of Ohio in its Court of Claims of Ohio and their United States 14th Amendment due process rights to a meaningful hearing at a meaningful time without the availability of any other legal recourse or remedy at law in Ohio.

77. Plaintiffs say that all of the statutes enacted, repealed or amended in toto or in part, by the passage of Am.Sub.H.B. No. 350, by the Ohio Legislature no longer exist as lawful statutes as a matter of law, following the August 16, 1999 decision of the Supreme Court of Ohio in the case The State ex rel. Ohio Academy of Trial Lawyers v. Sheward (1999), 86 Ohio St.3d 451 declaring it unconstitutional in toto.

78. R.C. § 109.36 was just such a statute, amended by Am.Sub.H.B. No. 350, that became inoperative as a matter of law from the date of the Sheward decision, supra.

79. Plaintiffs say that the now nonexistent R.C. § 109.36 is nonetheless embodied in,and absolutely necessary for the functioning of R.C. § 2743.02(F) that states:

> A civil action brought against a state officer or employee as defined in section 109.36 of the Revised Code, that alleges an officer's or employee's conduct was manifestly outside the scope of his employment or official responsibilities, or that the officer or employee acted with malicious purpose, in bad faith or in a wanton or reckless manner shall first be filed against the state in the court of claims, which has exclusive, original jurisdiction to determine, initially whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code and whether the courts of common pleas have jurisdiction over the civil action.

80. The Court of Claims of Ohio cannot now lawfully exercise its mandated judicial authority under R.C. § 2743.02(F), because of the failure of R.C. § 109.36 defining inter alia., as to who is a state officer, and because this statute is an integral and substantive part of R.C. § 2743.02(F), thereby rendering R.C. 2743.02(F) legally inoperative, and thwarting plaintiffs from bringing an action or this action in the Court of Claims where the State would pay the damages.

81. Plaintiffs say the results of defendants' actions stemming from their enactment of Am.Sub.H.B. No. 350, detailed paragraph 75 above, is the direct and proximate cause of plaintiffs damages: (1.) by creating a legal quandary under Ohio law that deprives plaintiffs of their right to sue the State

of Ohio's officers and employees in the Court of Claims for causes of actions arising from the facts of this case; and

82. That, (2.), by denying the plaintiffs' constitutional right of access to all Ohio Courts that are constitutionally required to be open to plaintiffs to give them a fair opportunity to vindicate their legal rights; and

83. That (3.), by denying plaintiffs their right to have all their causes of actions arising from the facts in this case decided at a meaningful time in a meaningful manner, in derogation of the due process clause of the 14th Amendment to the U.S. Constitution.

84. As a consequence of the foregoing paragraphs 77 through 80 inclusive, the defendants by failing to take prompt remedial action, after due notice of the Sheward decision, supra, perpetuated that legal impediment they created through their intentional, ultra vires, judicial acts and are thereby, equitably estopped and judicially estopped from asserting the statute of limitations as a defense in this case.

85. The defendants are equitably and judicially estopped from asserting the defense of the statute of limitations to plaintiffs' 42 U.S.C. § 1983 complaint as a matter of law, by plaintiffs pursuit of their bona fide moral claim that exists because plaintiffs were personally injured and killed by a State of Ohio constructed, guardrail instrumentality, and accrued as a result of the State and its political subdivisions legal exoneration from all liability to plaintiffs, in a final adjudication.

86. Plaintiffs' counsel on behalf of the plaintiffs, in good faith, sought to present their moral claim to the Ohio

Legislature and personally contacted Plaintiffs' State Representative Diane Grendell telephonically, to determine if she would be willing to intervene on behalf of plaintiff, James Kniskern, a citizen in her district, and introduce his moral claim to the Ohio Legislature.

87. Diane Grendell expressed her willingness to proceed and put plaintiffs' counsel in touch with her legislative aide, who then asked plaintiffs' counsel to forward to her by mail, the court opinions that qualified for a moral claim to her.

88. After plaintiffs' counsel had mailed in the requested documents he was advised by Diane Grendell's legislative aide to submit more detailed information and to forward the briefs and court opinions used in the adjudicated litigation to an attorney in the Statehouse for evaluation.

89. Time passed and the legislative bill was produced; it was forwarded by the legislative aide to plaintiffs' counsel; it detailed the basis of plaintiffs' moral claim against the State; it detailed how the moral damages were to be established in the Court of Claims of Ohio, and how those damages were to be paid by the State.

90. Plaintiffs' counsel by this time, because of the progress that had occurred, was totally relying upon State Representative Diane Grendell for guidance in obtaining damages for the plaintiffs through the introduction of the plaintiffs' moral claim legislation and had good reason to believe she would honor her earlier agreement to introduce the legislative bill into the legislature for committee hearing and hopefully passage.

91. Plaintiffs counsel, though continually pressing

State Representative Diane Grendell to honor her commitment and introduce plaintiffs' legislative bill, was continually put off and deferred filing plaintiffs' 42 U.S.C. § 1983 claim past the expiration of the 2 year statute of limitations, because in his judgment there was a reasonable expectation that plaintiffs' moral claim, having been truly articulated, recognized and acknowledged in the legislative bill, Exhibit A, drawn by the Legislative Service Commission at the request of a State Representative, that such a bill would not have been drawn nor issued if plaintiffs didn't have one.

92. Plaintiffs' counsel was further induced to defer filing plaintiffs' claim because in his judgment there was reasonable probability that the moral claim legislative bill would be enacted by the Ohio Legislature once the bill was introduced, by what plaintiffs' counsel perceived and had good reason to believe to be a moral legislature, composed of honorable men and women, worthy of respect that would, if not graciously honor plaintiffs bona fide moral claim, would have great difficulty in turning it down politically.

93. Plaintiffs' counsel, some time before the statute of limitations had run, sought and retained co-counsel whose credentials of political compatibility with State Representative Diane Grendell were impeccable, for the special purpose of having him assist in getting the legislative bill introduced.

94. Plaintiffs' co-counsel too, was led to believe by Diane Grendell that the legislative bill would be introduced soon, because he had sought out and obtained a co-sponsor in the House that she deemed necessary for both her introduction of plaintiffs legislative bill and its successful passage.

95. Plaintiffs say that though Diane Grendell continued to give assurances that she would introduce the bill and that it was in the offing, there came a point where it became apparent in September 1999 that she was persona non grata with the Ohio Legislature having brought her own suit in the Ohio Supreme Court against the Legislature because of some internal dispute.

96. Plaintiffs' counsel says that from September 1999, to the filing of this complaint he has diligently attempted to draft this complaint involving complicated legal and jurisprudential issues.

97. Plaintiffs say that the two year Statute of Limitations should not be determined by this Court, to have started to run from the date the Supreme Court of Ohio issued its order denying plaintiffs motion for reconsideration of their Memorandum In Support Of Jurisdiction on January 29, 1997, by finding that it was the date that the Plaintiffs knew or should have known they were legally injured by the Legislature or the date of June 27, 1997 when the U.S. Supreme Court denied their petition for writ of certiorari, when they no longer had any remedy at law available to them.

98. Plaintiffs plead in the alternative and say, that in establishing the date when plaintiffs' 42 USC § 1983 statute of limitations started to run as a matter of law, occurred when the plaintiffs' were charged with knowing that they were injured as a matter of law.

99. Plaintiffs had raised the issues of constitutional legislative injury in their motion for reconsideration in their Memorandum In Support Of Jurisdiction, but those

constitutional legislative injuries were not publicly acknowledged nor legally recognized at that time as such, by the Supreme Court of Ohio, thus, in effect informing plaintiffs that they were not injured at law.

100. The Supreme Court of Ohio's final denial of Plaintiffs' motion for reconsideration of their Memorandum In Support of Jurisdiction had a chilling effect upon both plaintiffs' and their trial counsel's ability to actually recognize and know, that as a matter of law they were injured by AM.Sub.H.B. No. 350, in that the Court's denial appeared and seemed to sanction the lawfulness of that Tort Reform Act.

101. Plaintiffs therefore say they could only be charged as a matter of law, with either actual or constructive knowledge of their 42 USC § 1983 constitutional legislative injury, when the Supreme Court of Ohio announced as a matter of law, in its decision on August 16, 1999, in the case The State ex rel. Ohio Academy of Trial Lawyers v. Sheward (1999), 86 Ohio St.3d 451, that established that the Ohio Legislature had in fact, by enacting Am.Sub.H.B. No. 350, performed an ultra vires judicial act as plaintiffs had contended causing them injury.

102. Plaintiffs' moral claim legislative bill is marked for identification as "Exhibit A" a copy of which is attached and incorporated by reference as though fully rewritten herein; and

103. Plaintiff Major Guy Cavaliere M.D. has been continuously on active duty in the United States Army from January 1, 1997 to the time of filing this complaint and that by virtue of the Soldiers and Sailors Relief Act, 50 USCS Appx §

525, the two year Statute of Limitations of 42 U.S.C. S 1983 is tolled as to him.

104. Plaintiff Major Guy Cavaliere M.D. is a wrongful death beneficiary and a real party in interest under R.C. § 2125.01 et seq., in the deaths of his wife, child, and sister-in-law, and has a loss of services action for the personal injuries his children sustained that was part of the actions brought against the State of Ohio and its political subdivisions.

105. This complaint is being filed and action brought during the minority of the plaintiff, JoAnna Cavaliere, and therefore the two year Statute of Limitation of 42 U.S.C. § 1983 is tolled as to her.

106. Plaintiffs say that two year Statute of Limitation of 42 U.S.C. S 1983 is tolled as to all the plaintiffs, including James Kniskern the duly appointed administrator through the Probate Court of Geauga County of the estates of Cynthia Ann Cavaliere, Jennifer Kniskern, and Felina Cavaliere, for the reasons set forth in paragraphs 86 through 101 inclusive, that he was caused to refrain from filing this claim at an earlier time upon the reasonable expectation that having lost the litigation against the State of Ohio on liability that the State would honor plaintiffs moral claim and pay their damages, since it was both the State's unsuitable guardrail that damaged plaintiffs as well as the State of Ohio's enactment of Am.Sub.H.B. No. 350.

107. Plaintiffs' moral claim legislative bill, marked for identification as "Exhibit A", is attached hereto and incorporated by reference as though fully rewritten herein, was solicited by Plaintiffs' counsel for enactment by the Ohio

Legislature through plaintiff James Kniskern's, Ohio State Representative, Diane Grendell, who both by herself and her legislative aide represented to Plaintiffs' counsel, that such a legislative bill arising from all the circumstances alleged in this complaint, was absolutely necessary to the introduction and presentment of plaintiffs' moral claim to the Ohio Legislature; and

108. That the moral claim legislative bill was prepared at State Representative Diane Grendell's instance and request, by the Ohio Legislative Service or other attorneys employed by the Ohio Legislature, for introduction and passage by the Ohio Legislature as a moral claim and that a copy was delivered to plaintiffs' counsel at his request in 1997; and

109. That the proposed legislative moral claim bill, delivered to Plaintiffs' counsel from the Ohio Legislative Service, after detailing all the circumstances from the opinions of the Courts, did not contest the liability of the State of Ohio to plaintiffs, directing that the plaintiffs, upon presenting their damages to the Court of Claims of Ohio for determination, that the amount so determined would be paid by the State; and

110. Plaintiffs say they initially relied upon State Representative Diane Grendell's representation that she, by herself, would introduce the plaintiffs' moral claim bill to the Ohio Legislature, and thereafter plaintiffs relied upon her representation, that she, with a co-sponsor would introduce it; and

111. Plaintiffs had good reason to believe that their moral claim bill would be introduced, and that after a

legislative committee hearing, that it would be enacted as legislation, since the bill as drawn by State drafters recognized the validity of Plaintiffs' moral claim, and plaintiffs through their counsel believed that the bill is one that a fair minded legislature could abide and would pay, after the damages were determined by the Court of Claims; and

112. Plaintiffs say that some of the defendant Ohio legislators sued in their individual capacity are holding State legislative office in their official capacity at the present time; that they retain the official power to act on behalf of the State of Ohio with the power and authority to continue to further obstruct the Ohio judicial process and otherwise interfere legislatively with the litigation and adjudication of plaintiffs' 42 U.S.C. § 1983 proceedings against those legislator defendants, individually and John Doe I, II, & III defendants in this Court of Common Pleas, the Court of Appeals of Cuyahoga County for the Eighth Judicial District and the Supreme Court of Ohio and any other Ohio or U.S. federal district or appellate Court where this case may be venued.

113. Plaintiffs invoke the inherent power of the Judiciary to issue appropriate orders, sua sponte or otherwise, to protect plaintiffs and their trial counsel in their maintenance of this obviously politically incorrect but necessary suit, calling for legislative accountability, from any and all untoward retaliatory acts of the defendants that heretofore have made manifest, both directly or indirectly, and will probably continue into the indefinite future, that will cause plaintiffs or their trial counsel to be compromised in the adjudication of plaintiffs' claim herein.

114. Plaintiffs say that plaintiffs will otherwise be irreparably damaged and have no other adequate or available remedy at law or equity under Ohio law.

115. Plaintiffs say that as a direct and proximate result of the foregoing malicious and intentional unconstitutional conduct and unreasonably repressive and unlawful judicial acts of the defendants in conspiring together as alleged herein, plaintiffs were damaged financially in their property and civil rights and entitled to exemplary damages.

116. Plaintiffs have been required to hire the services of attorneys to prosecute this action, and therefore, recovery of attorney fees, as allowed by law and this court are demanded herein, or made as a direct award.

WHEREFORE Plaintiffs pray that this court and the Judiciary, wherever this case may become sub judice, exercise its inherent power and issue all appropriate orders, sua sponte or otherwise, as necessary, during the pendency of this action to protect plaintiffs and their trial counsel from the legislator defendants subverting the judicial process that plaintiffs are participating in, in their pursuit of their 42 U.S.C. 1983 claims and from taking overt or covert retaliatory action against their trial attorney.

Plaintiffs further pray for a judgment against each and all of the defendants both jointly and severally in a sum and an amount in excess of $25,000.00 that will fully and fairly compensate plaintiffs for the damages they sustained, including reasonable attorney fees in maintaining this and the earlier actions, the costs they incurred therein, punitive damages, and for any and all other relief they may be

otherwise entitled to at law or equity.

COUNT II

117. Now comes the Plaintiffs and for their second cause of action against the defendants' John Does I, John Does II and John Does III and incorporates all the allegations contained in Count I as though fully rewritten herein.

118. Plaintiffs say that all of the defendants in Count I were lobbied by both registered and unregistered professional lobbyists in the State of Ohio, being designated as John Does I defendants herein; and by John Does II, their principals, defendants herein; and those John Does III, defendants herein, who funded both John Does I's and John Does II's lobbying effort.

119. John Does I's, John Does II's, and John Does' III's, all of whom are the Count II defendants whose true names, identities or capacities, whether individual, corporate, associate or otherwise and addresses are presently unknown to plaintiffs, but are known to the defendants in Count I, and therefore plaintiffs sue the Count II defendants by such fictitious names as named in the caption of this complaint.

120. Plaintiffs are informed, believes and thereon alleges that each of the Count II defendants is responsible in some manner for the events and happenings herein referred to, that caused damages to plaintiffs, as herein alleged.

121. Whenever in this complaint reference is made to any act of Count II defendants, and each of them, such allegation shall be deemed to mean that the individuals,

officers, directors, agents and employees of the Count II defendants did or authorized such acts while actively engaged in the management, direction, control and employ of the affairs of the Count II defendants, and were acting within the scope of their employment and agency, and engaged in a joint or common enterprise.

122. Whenever in this complaint reference is made to any act of the Count II defendants, such allegation shall be deemed to mean the act of each defendant acting individually, jointly, in concert, and severally.

123. Plaintiffs say that the professional lobbyists, John Does I, their principals, John Does II, and those who funded their lobbying effort, John Does III, treacherously, maliciously with a wanton or reckless disregard for the civil rights of the plaintiffs induced all or some of the defendants in Count I to enact Am.Sub.H.B. No. 350, a tort reform act.

124. Am.Sub.H.B. No. 350, a tort reform act. was legislation designed to injure plaintiffs in their legal and constitutional rights, and targeted plaintiffs and their trial lawyer as a class. when those Count II defendants, knew or should have known, both from the advice and information furnished them by their principals, from those who funded their lobbying effort, as well as from previous decisions of the Supreme Court of Ohio, that the tort reform act, Am.Sub.H.B. No. 350, they had successfully lobbied the defendants in Count I to enact, was seriously flawed constitutionally.

125. Plaintiffs say that Count II defendants knew or should have known, when they lobbied Count I defendants, that there was a reasonable legal probability that the legislation